

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
BOROUGH OF KINNELON, NEW JERSEY	)	File No. 0002865892
	)	
Request for Waiver of Sections 90.307(d) and	)	
90.311(a)(2) of the Commission's Rules	)	

**ORDER**

**Adopted: February 16, 2007****Released: February 16, 2007**

By the Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. On January 3, 2007 the Borough of Kinnelon, New Jersey (Kinnelon), which is eligible for licensing on public safety channels in the 470-512 MHz band, filed an application<sup>1</sup> for channel pair 477/480.3500 MHz,<sup>2</sup> in the Business/Industrial/Land Transportation (B/ILT) pool. Section 90.311(a)(2) of the Commission's rules<sup>3</sup> precludes Kinnelon from operating on B/ILT frequencies in the New York City/Northeast New Jersey metropolitan area (NY/NJ Metro Area). Kinnelon requests waiver of this rule section, stating that no suitable public safety channel is available to it.<sup>4</sup> It also requests waiver of Section 90.307(d) of the Commission's rules specifying the minimum distance between Kinnelon's site and an adjacent-channel television station. For the reasons stated below, we are granting Kinnelon's requested waivers.

**II. BACKGROUND**

2. Kinnelon states that its current public safety communication system is substandard and that the B/ILT channel pair requested is necessary because it must expand its system to provide critical public safety communications services *e.g.*, police, fire, and emergency medical service to the Borough's residents, and interoperable communications with surrounding boroughs and communities.<sup>5</sup> Kinnelon contends that there is no suitable public safety spectrum available in the NY/NJ Metro Area. In support of its contention, Kinnelon incorporates by reference a previous order in which the Commission found that a waiver proponent had adequately demonstrated that the NY/NJ Metro Area lacked suitable public safety spectrum.<sup>6</sup> Kinnelon states it has identified a B/ILT channel pair, 477/480.3500 MHz, that could

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<sup>1</sup> See FCC File No. 0002865892.

<sup>2</sup> Frequencies in the 470-482 MHz band (TV channels 14 and 15) are available for assignment to private land mobile radio (PLMR) users with base stations located within fifty miles of the New York/Northeastern New Jersey center coordinates. See 47 C.F.R. §§ 90.303 and 90.305.

<sup>3</sup> 47 C.F.R. §§ 90.307(d), 90.311(a)(2).

<sup>4</sup> See attachment to FCC File No. 0002865892 (Waiver Request).

<sup>5</sup> See Waiver Request.

<sup>6</sup> *Id. citing* City of Summit New Jersey, *Order*, 20 FCC Rcd 16181 (WTB, PSCID 2005).

be used to satisfy its system expansion requirements and requests waiver of Section 90.311(a)(2) of the Commission's rules to allow it to operate on the B/ILT channel. Kinnelon notes that there is only one co-channel B/ILT license, call sign WQCI390, on this channel pair in the NY/NJ Metro Area<sup>7</sup> and that the sites licensed under WQCI390 are in excess of the 64 kilometers (km) (40 mile) minimum co-channel spacing specified in Section 90.313(c) of the Commission's rules.<sup>8</sup>

3. Kinnelon requests waiver of Section 90.311(a)(2) of the Commission's rules which states that, in the 470-512 MHz band, the first license granted on a given channel in an urban area establishes the only category of license that will be allowed subsequently on that channel within that urban area.<sup>9</sup> Because the first licensee on channel pair 477/480.3500 in the NY/NJ Metro Area was a B/ILT licensee, Kinnelon, absent a waiver, could not use that channel pair at its proposed site.<sup>10</sup>

4. Kinnelon also requests a waiver because its proposed transmitter site is 123.9 km (77 miles) from adjacent channel television station WNEP-TV, less than the 145 km (90 mile) minimum spacing specified in Section 90.307(d) of the Commission's rules. In support of that waiver request, Kinnelon provides a technical study showing that its station will not cause interference within the WNEP-TV Grade B service contour.<sup>11</sup>

### III. DISCUSSION

5. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>12</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>13</sup>

6. Kinnelon has shown that the underlying purposes of the rules it seeks waived will be served, not undercut, if the waivers are granted. The rules in question were adopted primarily to limit interference from or to a proposed station. However, interference is not a disposing factor here because: (a) Kinnelon has demonstrated that its operations will not interfere with reception of WNEP-TV, within the WNEP-TV protected service contour, and (b) the distance between Kinnelon's site and the only co-channel B/ILT license in the NY/NJ Metro Area, WQCI390, is sufficient to preclude co-channel interference, thus making it unnecessary to invoke the "same-category" limitation in Section 90.311(a)(2)

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<sup>7</sup> See Waiver Request. The licensee is Angel Rodriguez (WQCI390).

<sup>8</sup> 47 C.F.R. § 90.313(c). Also, PLMR base stations must be located no more than 80 km (50 miles) from the geographic center of the urbanized areas listed in Section 90.303. See 47 C.F.R. § 90.305(a). There are also adjacent channel protection criteria for "offset" channels in the 470-512 MHz band as established in Telecommunications Industries Association (TIA) Bulletin TSB-88. Kinnelon submits a study demonstrating compliance with those criteria. See Waiver Request.

<sup>9</sup> The rule was established to maintain frequency separation between public safety and B/ILT radio systems in the same area to limit the possibility of interference. See Land Mobile Use of TV Channels 14 through 20, *Report and Order*, Docket No. 18261, 23 FCC 2<sup>nd</sup> 325 (1970).

<sup>10</sup> See n 7, *supra*.

<sup>11</sup> The protected contour for a TV station operating on TV channels 14-69 is the Grade B, 64 dBμV/m F:(50,50) contour. See 47 C.F.R. §§ 73.683(a), 90.307. Kinnelon advises that it notified WNEP-TV of its pending application and associated waiver request.

<sup>12</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>13</sup> 47 C.F.R. § 1.925(b)(3)(ii).

of the Commission's rules.<sup>14</sup> We also find that the factual circumstances associated with Kinnelon's application -- the lack of a suitable public safety frequency<sup>15</sup> -- would make denial of the waiver inconsistent with the public interest. Finally, and for the same reason -- the unavailability of a suitable public safety frequency -- we find that Kinnelon has no reasonable alternative available to satisfy the public safety communications needs of the Borough and its need for interoperability with surrounding jurisdictions. Accordingly, we are granting the rule waivers that Kinnelon requests.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, the request for waiver of Sections 90.307(d) and 90.311(a)(2) of the Commission's rules filed by the Borough of Kinnelon in conjunction with application FCC File No. 0002865892 IS GRANTED.

8. IT IS FURTHER ORDERED that application FCC File No. 0002865892 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

9. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Deputy Chief, Policy Division  
Public Safety and Homeland Security Bureau

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<sup>14</sup> Kinnelon's proposal also meets the adjacent channel protection criteria.

<sup>15</sup> As Kinnelon requests, we take official notice that our prior order, *see supra* n.6 concluded that the waiver proponent there made an adequate showing of the lack of suitable public safety spectrum in the NY/NJ Metro Area.